

§ 92.5

(3) is able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

Qualified translator means a translator who:

(1) Adheres to generally accepted translator ethics principles, including client confidentiality;

(2) has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language; and

(3) is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

Recipient means any State or its political subdivision, or any instrumentality of a State or its political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, to whom Federal financial assistance is extended directly or through another recipient and which operates a health program or activity, including any subunit, successor, assignee, or transferee of a recipient.

Section 504 means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. 794), as amended.

Section 1557 means Section 1557 of the ACA (42 U.S.C. 18116).

Sex stereotypes means stereotypical notions of masculinity or femininity, including expectations of how individuals represent or communicate their gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics. These stereotypes can include the expectation that individuals will consistently identify with only one gender and that they will act in conformity with the gender-related expressions stereotypically associated with that gender. Sex stereotypes also include gendered expectations related to the appropriate roles of a certain sex.

State-based MarketplaceSM means a Health Insurance MarketplaceSM established by a State pursuant to 45 CFR 155.100 and approved by the Department pursuant to 45 CFR 155.105.

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Taglines mean short statements written in non-English languages that indicate the availability of language assistance services free of charge.

Title I entity means any entity established under Title I of the ACA, including State-based Marketplaces and Federally-facilitated Marketplaces.

Title VI means Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d *et seq.*), as amended.

Title IX means Title IX of the Education Amendments of 1972 (Pub. L. 92-318; 20 U.S.C. 1681 *et seq.*), as amended.

§ 92.5 Assurances required.

(a) *Assurances*. An entity applying for Federal financial assistance to which this part applies shall, as a condition of any application for Federal financial assistance, submit an assurance, on a form specified by the Director, that the entity's health programs and activities will be operated in compliance with Section 1557 and this part. A health insurance issuer seeking certification to participate in a Health Insurance MarketplaceSM or a State seeking approval to operate a State-based MarketplaceSM to which Section 1557 or this part applies shall, as a condition of certification or approval, submit an assurance, on a form specified by the Director, that the health program or activity will be operated in compliance with Section 1557 and this part. An applicant or entity may incorporate this assurance by reference in subsequent applications to the Department for Federal financial assistance or requests for certification to participate in a Health Insurance MarketplaceSM or approval to operate a State-based MarketplaceSM.

(b) *Duration of obligation*. The duration of the assurances required by this subpart is the same as the duration of the assurances required in the Department's regulations implementing Section 504, 45 CFR 84.5(b).

(c) *Covenants*. When Federal financial assistance is provided in the form of real property or interest, the same conditions apply as those contained in the Department's regulations implementing Section 504, at 45 CFR 84.5(c), except that the nondiscrimination obligation applies to discrimination on all

bases covered under Section 1557 and this part.

§ 92.6 Remedial action and voluntary action.

(a) *Remedial action.* (1) If the Director finds that a recipient or State-based MarketplaceSM has discriminated against an individual on the basis of race, color, national origin, sex, age, or disability, in violation of Section 1557 or this part, such recipient or State-based MarketplaceSM shall take such remedial action as the Director may require to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against an individual on the basis of race, color, national origin, sex, age, or disability, in violation of Section 1557 or this part, and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both entities to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of Section 1557 or this part, require a recipient or State-based MarketplaceSM to take remedial action with respect to:

(i) Individuals who are no longer participants in the recipient's or State-based MarketplaceSM's health program or activity but who were participants in the health program or activity when such discrimination occurred; or

(ii) Individuals who would have been participants in the health program or activity had the discrimination not occurred.

(b) *Voluntary action.* A covered entity may take steps, in addition to any action that is required by Section 1557 or this part, to overcome the effects of conditions that result or resulted in limited participation in the covered entity's health programs or activities by individuals on the basis of race, color, national origin, sex, age, or disability.

§ 92.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each covered entity that employs 15 or more persons shall designate at least one employee to coordinate its efforts

to comply with and carry out its responsibilities under Section 1557 and this part, including the investigation of any grievance communicated to it alleging noncompliance with Section 1557 or this part or alleging any action that would be prohibited by Section 1557 or this part. For the Department, including the Federally-facilitated Marketplaces, the Director will be deemed the responsible employee under this section.

(b) *Adoption of grievance procedures.* Each covered entity that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of grievances alleging any action that would be prohibited by Section 1557 or this part. For the Department, including the Federally-facilitated Marketplaces, the procedures for addressing complaints of discrimination on the grounds covered under Section 1557 or this part will be deemed grievance procedures under this section.

§ 92.8 Notice requirement.

(a) Each covered entity shall take appropriate initial and continuing steps to notify beneficiaries, enrollees, applicants, and members of the public of the following:

(1) The covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities;

(2) The covered entity provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities;

(3) The covered entity provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited English proficiency;

(4) How to obtain the aids and services in paragraphs (a)(2) and (3) of this section;